

Attachment 1

Date

Owner Name
Address
City, State Zip

Certified Mail

Dear [Owner]:

On [date], the [] County Health Department received your application for a sewage system repair permit which did not include supporting documentation from an AOSE/PE.¹ Based on our site and soil evaluations (copy attached), the conditions on your lot do not substantially comply with the minimum requirements of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20, as amended July 1, 2000, the *Regulations*) for a Septic Tank Effluent (STE, *Regulations*, § 594) system for the following reasons:²

(Choose one or more or add as appropriate.)

1. Insufficient depth to a limiting factor such as the seasonal water table, a restrictive horizon, rock, etc.
2. Insufficient horizontal separation from well, shellfish waters, etc....
3. Insufficient area of suitable soil.

The repair system for your property must have Secondary Effluent (SE, *Regulations*, § 280)³, pressure dosing⁴, or both as part your repair system's design. **[Note: modify this paragraph to fit the specific situation]** These requirements assure that public health and groundwater supplies are protected and that the risk for human disease transmission is minimized.

Employees of the Virginia Department of Health (VDH) typically do not design sewage systems with SE or pressure dosing because of the complexity of these designs and the wide variety of brand-name products and equipment available. These types of designs require extensive consultation between the owner and an AOSE/PE to assure that

¹ AOSE/PE means a Professional Engineer (PE) working in consultation with an Authorized Onsite Soil Evaluator (AOSE) or an AOSE.

² Septic Tank Effluent means "effluent characterized by a five-day biochemical oxygen demand between 120 and 200 mg/l; total suspended solids between 70 and 150 mg/l; fats, oils, and grease of 30 mg/l or less; and having no other toxic, hazardous, or constituents not routinely found in residential wastewater flows (*Regulations*, § 120)."

³ Secondary Effluent means "effluent treated to reduce five-day biochemical oxygen demand to 30 mg/l or less, total suspended solids to 30 mg/l or less, and fats, oils, and grease to less than 5 mg/l (*Regulations*, § 120)."

⁴ Pressure Dosing means any system under the *Regulations* that requires a pump to pressurize a dosing system or device. Examples include drip dispersal, drip irrigation, manifold systems, mound systems, and low pressure distribution systems, etc. The definition does not include gravity systems, systems that pump to a higher elevation (distribution box with or without enhanced flow), or systems that require a pump because the ground surface over the soil absorption area is higher than the elevation of the lowest fixture in the house.

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the owner's needs are met. VDH does not have the resources to provide this extensive consultation and cannot choose specific products because of our regulatory relationship with all product manufacturers.

The Virginia General Assembly passed a law, effective July 1, 2004, that provides an opportunity for you to receive a Waiver from the requirements for SE, pressure dosing, or both as long as your system was not installed illegally without a permit and as long as there was no requirement for these in your original permit and approval documents (Va. Code, § 32.1-164.1:1). I have determined that you are eligible for the Waiver if you choose to apply for it.

If you choose to receive the Waiver, VDH staff will design your system, at your request, as long as the requirements are relatively simple. If you do not want to receive the Waiver or if you do not want VDH to design your system, you will need to hire a qualified consultant to design your repair or replacement system. Currently, VDH recognizes PEs (Professional Engineers licensed in the Commonwealth of Virginia) for any type of system design and AOSEs (Authorized Onsite Soil Evaluators certified by VDH) for certain system designs that do not require the practice of engineering. If you wish to receive the Waiver and **do not** want VDH to design the repair system, please complete the enclosed Waiver Request, Agreement, and Waiver document ("Waiver") and return it to this office with your AOSE/PE plans for the repair or replacement system- **do not check the box requesting VDH to design your system**. If you want the Waiver and prefer that VDH design your system, simply complete the Waiver, check the design request box, and return it to our office (address noted on the letterhead). As soon as we receive this information, we will act accordingly and issue you a repair permit as soon as possible.

If you are signing the Waiver agreement, you will need to have your signature notarized. This is a legal document and you should review it carefully. You may wish to seek legal advice from an attorney to explain what the Waiver means and its future consequences when you transfer the property to a new owner. The law requires that you record the Waiver in the land records of the clerk of the circuit court in the jurisdiction in which your property is located. A Waiver is only transferable between a husband and wife.

The Waiver and the operating permit for your system are both null and void immediately whenever your property is transferred to any person (or entity) other than your spouse (husband or wife). It is unlawful to operate an onsite sewage system without a valid operating permit (*Regulations*, § 240). This means that any new owner will not be able to lawfully occupy the dwelling/structure and operate the sewage system until he obtains a new operating permit. The new owner will need to apply for and obtain a new construction permit that complies with those parts of the *Regulations* that were waived (i.e. secondary treatment and/or pressure dosing) and any new requirements that may have been adopted after the Waiver was granted. The operating permit for the system can

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only be reinstated after the upgrades are completed. You are required by law to disclose these conditions in writing to any and all potential purchasers or mortgage holders. *These requirements apply to your system, even if it does not appear to be failing at the time of transfer.*

If you want an AOSE/PE to design your system under the Waiver, please remember to tell your consultant so that he can submit plans that incorporate your wishes. VDH will not change your expert's design and an AOSE/PE must approve the system's final construction.

If you request the Waiver and ask for a VDH design, please remember that VDH does not have the resources to consider, inform, and consult with you about all of the design options available in the marketplace for a repair. There are hundreds of design options and potentially hundreds of products from which to choose within each possible design. Depending on your specific needs, please consider that VDH could design a system that would not meet your immediate or long-term interests because of our lack of resources to provide you with complete consultation services. VDH regulates the onsite sewage industry and approves (or denies) requests from product manufacturers- we cannot recommend one product over another just as we cannot design or recommend a specific proprietary pre-engineered system. Without being able to recommend certain products or proprietary designs because of our unique position as a regulator and having scarce resources to provide you with detailed consultation, it is possible that you could get an inferior design as compared to a private consultant. A private consultant would not necessarily have VDH's limitations and could propose specific products and provide more in depth consultation.⁵

Also remember that VDH cannot advise you about how a system under a Waiver might affect your ability to sell the property since you are required to upgrade the system at the time of property transfer; nor can we advise you about liability issues should your system fail and adversely impact drinking water supplies. A system installed under a Waiver does not comply with the *Regulations* which were adopted by the Board of Health to provide the least intrusive methods to adequately protect groundwater supplies and public health

You will soon receive (or have already received) a letter from this office notifying you that the failure of your sewage system may constitute a violation of the *Regulations*. Please follow any directions contained in that letter and carefully heed any time limits for repairing your failing system. Because your sewage system has failed, your sewage system operation permit is null and void in accordance with 12 VAC 5-610-340 of the *Regulations*. As I mentioned earlier in this letter, you are required to have an operating permit in order to use an onsite sewage system and I encourage you to complete the steps necessary to get a new operating permit as quickly as possible.

⁵ Some private consultants are affiliated with only one product brand and may not provide you with a complete list of possible designs.

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You have the right to challenge the results of VDH's site and soil evaluations and the decisions we have made regarding your repair application (see the first and second paragraphs of this letter) by requesting an informal hearing. Your written request for a hearing (also called an informal fact-finding conference) must be received in this office within 30 days from your receipt of this letter. Thank you for your prompt attention and action in this matter. Please call me at (____) ____-____ if you have more questions.

Sincerely,

EHSS

Attachments: (2)